

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 36

PRACTICE AND PROCEDURE OF THE BUSINESS REGISTRATION
DIVISION

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-36-1 Applicability. This chapter shall apply to all programs, both present and future, in the business registration division, except that this chapter shall not apply to the administration of the sale of securities act, and the solicitation of funds from the public. [Eff 5/10/69; am 8/9/71; am and ren §16-36-1, 7/30/81; am and comp 12/21/84; comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §26-9)

§16-36-2 Definitions. As used in this chapter:

"Agricultural cooperative association annual report" means the annual report required to be delivered for filing by agricultural [and fishing] cooperative associations.

"Computerized information" means information regularly maintained by an agency in electronic or other physical form and is subject to chapter 92F, HRS.

"Division" means the business registration division of the department of commerce and consumer affairs.

"Document" means any executed article, agreement, affidavit, certificate, declaration, petition, application, statement, annual report, and every kind of paper, except correspondence, filed in the division in accordance with statutory requirements.

"Electronic access" means intermittent electronic or remote (dial-up) user access to computerized information.

"Filed" means that a document has been received and entered of record by the division in accordance with statutory requirements.

"Official forms" mean forms adopted and provided by the division and which are required to be used by the public.

"Registrant" means the person to whom a certificate of registration of trade name, trademark, service mark, print, or label has been issued, and includes the assignee of a registrant.

"Unofficial forms" mean forms provided by the division for the convenience of the public, the use of which is optional. [Eff 5/10/69; am and ren §16-36-2, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §26-9)

§16-36-3 Filings. (a) Unless otherwise provided, all documents shall be:

- (1) Typewritten, photocopied, or printed in black ink on one side of the page. Standard pica or elite print or larger shall be used. Dot matrix printing may be accepted at the discretion of the division administrator if it is printed in black ink and if it is plainly legible;
- (2) Signed in black ink;
- (3) On bond paper which shall be white and 8-1/2 x 11 inches;
- (4) Plainly legible and if signatures cannot be read, names shall be typed below signatures;
- (5) Of permanent nature; and
- (6) In the English language.

(b) Unless otherwise provided, only the original shall be filed. [Eff 5/10/69; am 9/4/79; am and ren §16-36-3, 7/30/81; am and comp 12/21/84; am 4/4/87; am and comp 2/6/88] (Auth: HRS §§26-9, 91-2) (Imp: HRS §91- 2)

§16-36-4 Forms and instructions. The following official forms shall be filed:

- (1) Domestic corporations.
 - D1-1 Application for reservation of corporate name (Also applicable to foreign corporations)
 - D1-17 Domestic profit corporation annual report
 - D2-8 Domestic nonprofit corporation annual report
 - D2-9 Agricultural cooperative association annual report
- (2) Foreign corporations.
 - F1-5 Foreign profit corporation annual report
 - F2-5 Foreign nonprofit annual report
- (3) Partnerships.
 - P-2 Domestic general partnership annual statement
 - FG-3 Foreign general partnership annual statement
 - LP-8 Domestic limited partnership annual statement
 - FLP-5 Foreign limited partnership annual statement

- (4) Trade names, trademarks, prints and labels.
 - T-1 Application for registration of trade name
 - T-2 Application for registration of a trademark
 - T-3 Application for registration of a service mark [Eff 5/10/69; am and ren §16-36-4, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §§26-9, 91-2) (Imp: HRS §91-2)

§16-36-5 Fees. (a) Statutory fees shall be paid at the time of submission of documents for filing. Payment for copies of documents reproduced or prepared by the division shall be made prior to actual reproduction or preparation. Payment for copies of publications shall be received before the publications are mailed or delivered.

(b) No refunds shall be made of fees lawfully imposed except in the case of special handling fees. Special handling fees may be refunded if it is determined that a special handling document has not been reviewed within a period set by the division administrator at the time the document is submitted. In case a document is rejected and is not resubmitted within fifteen days for Oahu registrants and thirty days for others, the document is deemed not filed and the filing fee shall not be refunded.

(c) The fee for the duplication or copying of microfiche records shall be \$2.50 per microfiche. [Eff 5/10/69; am and ren §16-36-5, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-128, 425-12)

§16-36-6 Repealed. [R 2/6/88]

§16-36-7 Repealed. [R 2/6/88]

§16-36-8 Repealed. [R 2/6/88]

§16-36-9 Repealed. [R 2/6/88]

SUBCHAPTER 2

PROCEDURES

§16-36-10 Filing of domestic profit and nonprofit corporation annual reports. (a) All corporations shall deliver for filing the first annual report due after incorporation as of the end of the first calendar year, provided that any corporation incorporated after December 20 need not deliver for filing an annual report for the first calendar year in which they are incorporated.

(b) An annual report shall be filed annually even though a corporation may have been inactive for that period. [Eff 5/10/69; am 9/4/79; am and ren §16-36-10, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-126, 415B-12)

§16-36-11 Filing of foreign profit and nonprofit corporation annual reports. (a) All corporations shall deliver for filing the first annual report as of the end of the calendar year in which the corporation registered, provided that any corporation which registered after December 20 need not deliver for filing an annual report for the calendar year in which it registered.

(b) An annual report shall be delivered for filing annually even though a corporation may have been inactive for that period. [Eff 5/10/69; am 9/4/79; am and ren §16-36-11, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-126, 415B-12)

§16-36-11.3 Filing of domestic and foreign general partnership annual statements. All domestic and foreign general partnerships shall deliver for filing the first annual statement as of the end of the calendar year in which the partnership registered, provided that any general partnership which registered after December 20 need not deliver for filing an annual statement for the calendar year in which it registered. [Eff and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §425-1)

§16-36-11.5 Filing of domestic and foreign limited partnership annual statements. All domestic and foreign limited partnerships shall deliver for filing the first annual statement as of the end of the calendar year in which the partnership registered, provided that any limited partnership which registered after December 20 need not deliver for filing an annual statement for the calendar year

in which it registered. [Eff and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§425D-203.5, 425D-906.5)

§16-36-12 Foreign corporations; trade names, trademarks, prints, and labels. (a) If the name of a foreign corporation registrant, which has not registered pursuant to chapters 415 and 415B, Hawaii Revised Statutes, has been changed, the change may be recorded by the filing of an amendment to the articles of incorporation showing that the name has been changed, certified to by the proper official of the state or country under the laws of which it is incorporated, or by the filing of a certificate by the proper official of the state or country under the laws of which it is incorporated, that the name has been changed, together with the filing fee of \$10 for nonprofit corporations and \$25 for profit corporations.

(b) If a foreign corporation registrant which has not registered pursuant to chapters 415 and 415B, Hawaii Revised Statutes, is merged with and absorbed by another foreign corporation, or is involved in a consolidation, the change in the ownership of the registration may be recorded by the filing of a copy of the merger agreement or consolidation agreement, certified to by the proper [state] official of the state or country under the laws of which it is incorporated, or by the filing of a certificate by the proper official of the state or country under the laws of which it is incorporated, certifying to the merger or consolidation, together with the filing fee of \$10 for nonprofit corporations and \$25 for profit corporations.

(c) A registration may be assigned by the registrant by filing an executed copy of an assignment, together with the filing fee of \$10.

(d) A registration may be canceled by filing a request for cancellation, signed by the registrant.

(e) Renewals shall be filed not earlier than six months prior to the registration expiration date. [Eff 5/10/69; am and ren §16-36-12, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§482-2, 482-3, 482-8)

§16-36-12.5 Execution of application for certificate of authority of foreign corporation and statement of change of registered agent of foreign corporation. The application for certificate of authority shall be countersigned by the registered agent of the foreign corporation. Any statement of change of registered agent shall be countersigned by the successor resident agent. [Eff and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-113, 415-114, 415B-129, 415B-130)

SUBCHAPTER 3

STATEMENTS OF POLICY

§16-36-13 Penalties. (a) Penalties shall be assessed commencing fifteen days after the due date of an annual report, partnership statement, license fee, or of any other document required to be filed with the division.

(b) Penalties may be waived or reduced upon written request and only for good cause shown. [Eff 5/10/69; am and ren §16-36-13, 7/30/81; am and comp 12/21/84; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-135, 415B-157)

§16-36-14 Requests for information. (a) Reasonable requests for information by the public, in person or by mail, shall be given at no charge [in person or by mail]. Requests for information by telephone for Oahu callers shall be limited to information available on on-line computer terminals and for neighbor island or out-of-state callers requests shall only be of a specific nature and shall not cause the employees to spend an unreasonable amount of time on the call; any other requests will require the caller to inspect and review the appropriate records at the division's office.

(b) Requests for lists of corporations, partnerships, licenses, etc., or for information which shall require considerable personnel time shall not be complied with. However, any person wishing to compile a list of firms, licensees, etc. may be permitted to do so upon proper request. Permission may be granted only if there is no interference with the normal work carried on by the employees.

(c) Requests for computerized information.

(1) Requests for computerized information on magnetic tape shall be submitted in writing. The fee for providing such information shall be \$1,000 per magnetic tape reel plus the costs incurred by the division. Costs may include, but are not limited to, billing service fees and computer consultant fees. The requestor shall furnish the magnetic tape reels.

(2) Requests for electronic access to computerized information shall be submitted in writing. The monthly fee for providing such information shall be \$25 per month plus a 25 cents per minute charge after the first ten minutes of each connection plus any costs incurred by the division. Costs may include, but are not limited to,

billing service fees, network usage fees and computer consultant fees.

- (3) To maintain electronic access or magnetic tape access to computerized information, the requestor or subscriber shall comply with all provisions of (c) (1) and (2) of this section, and shall:
 - (i) Pay all outstanding fees and charges within twenty-five days of the end of each billing period;
 - (ii) Not sell or make exact copies or duplicates of the raw data, or any portion thereof, being provided by the division without the express written permission of the director; provided, however, that this does not prohibit the sale by the subscriber of a value-added information product which incorporates, or is derived from, the raw data;
 - (iii) Observe all federal, state and local laws concerning the use of information networks and telecommunication equipment and services; and
 - (iv) Waive any claim against and hold harmless the department, division and State for any claim, injury or proprietary loss a user or other third party may have or suffer as a consequence of any misinformation, or false, erroneous or inaccurate information the user or other third party may obtain through use of the computerized information.
- (4) A user shall be denied continued access to the computerized information if the user fails to abide by any of the above terms and conditions.
- (5) The department, division, and the State make no warranties, guarantees or promises, express or implied, that the computerized information is free of defects, is intended to fit a particular purpose, or is merchantable. [Eff 5/10/69; am and ren §16-36-14, 7/30/81; am and comp 12/21/84; am 10/12/85; comp 2/6/88; am and] (Auth: HRS §26-9) (Imp: HRS §§92F-11, 92F-12, 415-55, 415B-10)

§16-36-15 Registration of trademarks, service marks, prints, and labels; corporation names, partnership names, and trade names. (a) In making determinations as to whether names or marks submitted for registration are substantially identical to registered names or marks, the following factors shall be considered:

- (1) Purely geographic names shall not be registered such as "Honolulu" or "Olomana";
 - (2) Coined words may be restricted to one registrant unless consent is granted by the registrant. For example, "AMFAC" or "JALPAK";
 - (3) Identical pronunciation of a name or mark with a registered name or mark shall prohibit registration. For example, "Beach Days" versus "Beach Daze" or "Waimanalo Sons" versus "Waimanalo Suns";
 - (4) The root word or words of the name or mark shall be considered. For example, "Hawaii" versus "Hawaiian," "Island" versus "Islander," "Associates" versus "Association"; and
 - (5) Deceptive words, symbols, or phrases shall not be registered.
- (b) In making rejections of names applied for, the applicants shall be advised of the basis for the rejection. [Eff 5/10/69; am 9/4/79; am and ren §16-36-15, 7/30/81; am and comp 12/21/84; comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-8, 415B-7, 425-6, 425D-102, 482-4)

§16-36-16 Investment clubs. Any investment club whose purpose is to invest its assets solely in securities for the education and benefit of its members and whose business is only with registered securities dealers in Hawaii shall not be considered to be conducting business in the State, and compliance with the provisions of the general partnership law shall not be required. [Eff 5/10/69; am and ren §16-36-16, 7/30/81; am and comp 12/21/84; am 10/12/85; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §425-1)

§16-36-17 Foreign corporations. A foreign corporation that is a general partner in a partnership doing business in the State shall register as a foreign corporation and shall be subject to the requirements of chapters 415 and 415B, HRS. [Eff 5/10/69; am and ren §16-36-17, 7/30/81; am and comp 12/21/84; am 10/12/85; am and comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §§415-106, 415B-121)

SUBCHAPTER 4

ADMINISTRATIVE PROCEDURE

§16-36-18 Reconsideration. Any person aggrieved by any action of the division may request a reconsideration within thirty days of the action and

specifically point out in writing why the action is improper, including all argument, authorities, factors, affidavits, exhibits, and any other matter which the person may term relevant, whereupon the action shall be reconsidered by the director of commerce and consumer affairs." [Eff 5/10/69; am 9/4/79; am and ren §16-36-18, 7/30/81; am and comp 12/21/84; comp 2/6/88] (Auth: HRS §26-9) (Imp: HRS §26-9)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments to and compilation of Chapter 16-36, Hawaii Administrative Rules, on the Summary page dated December 17, 1987, were adopted on December 17, 1987, following a public hearing held on December 16, 1987, after public notice was given in the Honolulu Advertiser on November 24, 1987.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robert A. Alm

ROBERT A. ALM

Director of Commerce and Consumer Affairs

/s/ John Waihee

JOHN WAIHEE

Governor

State of Hawaii

Dated: 1/27/88

January 27, 1988

Filed

APPROVED AS TO FORM:

/s/ Paul T. Tsukiyama

Deputy Attorney General

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-36
Hawaii Administrative Rules

December 17, 1987

SUMMARY

1. §§16-36-2 to 16-36-5 are amended.
2. §§16-36-6 to 16-36-9 are repealed.
3. §§16-36-10 and 16-36-11 are amended.
4. §16-36-11.3 is added.
5. §16-36-11.5 is added.
6. §16-36-12 is amended.
7. §16-36-12.5 is added.
8. §16-36-13 is amended.
9. §§16-36-16 and 16-36-17 are amended.
10. Chapter 16-36 is compiled.

This material can be made available for individuals with special needs. Please call the Division Secretary, Business Registration Division, DCCA, at 586-2744, to submit your request.